

# Exhibit 38

*United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.*

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To  
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.  
Local Rule 56.1 Statement of Undisputed Material Facts  
in Support of Their Motion For Summary Judgment

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#X07 CV-03-0083296-S (CLD)      SUPERIOR COURT

COMPLEX LITIGATION

DOCKET at TOLLAND

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STATE OF CONNECTICUT,	)
Plaintiffs,	)
vs.	)
DEY, INC., ROXANE	)
LABORATORIES, INC., WARRICK	)
PHARMACEUTICALS CORP.,	)
SCHERING-PLOUGH CORP., and	)
SCHERING CORPORATION	)
Defendants.	)

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DEPOSITION OF ANTHONY TAVOLARO

TUESDAY, 22 NOVEMBER, 2005

9:11 AM

Henderson Legal Services  
(202) 220-4158

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1                                      DEPOSITION of ANTHONY TAVOLARO,  
2      called as a witness by and on behalf of the  
3      Plaintiff, pursuant to the applicable provisions of  
4      the Connecticut Rules of Civil Procedure, before P.  
5      Jodi Ohnemus, Notary Public, Certified Shorthand  
6      Reporter, Certified Realtime Reporter, and  
7      Registered Merit Reporter, within and for the  
8      Commonwealth of Massachusetts, at the Courtyard  
9      Marriott, 32 Exchange Terrace, Providence, Rhode  
10     Island, on Tuesday, 22 November, 2005, commencing  
11     at 9:11 a.m.

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1           A.     Bob Sykora.

2           Q.     And do you know who Bob reported to?

3           A.     Richard Feldman.

4           Q.     And do you recall an individual named Ed  
5     Tupa at any time during your time period with  
6     Roxane?

7           A.     No, I've heard the name, but he was no  
8     longer at the company when I got there.

9           Q.     And was it your -- do you have an  
10    understanding as to whether Richard Feldman took Ed  
11    Tupa's position?

12          A.     I don't -- I don't know one way or the  
13    other, no. That was -- intuitively, that's not  
14    what I understood, no. I think Tupa was, like,  
15    president at Roxane or something at some point. I  
16    don't know.

17          Q.     Who else were national account managers  
18    when you started in March of '99?

19          A.     We had a pretty large group. We had Dawn  
20    Gordon; Tom Via, Colin Carr-Hall, Debbie Kutner,  
21    Steve Snyder, and myself when I started, and I  
22    think there was one other position that was filled

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1      shortly after, also.

2            Q.      And do you recall who filled that?

3            A.      Yes, that was Mike Doan. That was the  
4      team.

5            Q.      He started after you?

6            A.      Yeah, a couple of weeks after.

7            Q.      Do you recall what his territory was?

8            A.      I don't recall exactly what his territory  
9      was. I'm trying to -- I think it was southeast,  
10     but I'm not positive.

11           Q.      And then when you started as -- in your  
12     position as national account manager, what were  
13     your job responsibilities?

14           A.      Basically, you know, account management.  
15     I was, you know, responsible for the Roxane  
16     portfolio of products, as well as the Boehringer  
17     Ingelheim portfolio, you know, within the assigned  
18     territory or the assigned accounts that were  
19     defined within that territory, account management,  
20     you know, included, you know, service in the  
21     accounts providing information on our products, as  
22     well as, you know, obviously trying to secure

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1      additional multisource business.

2            Q.      And did you have contracting input?

3            A.      Yes.    I mean, from the perspective that,  
4      you know, we would -- I would have discussions in  
5      negotiations with customers, and I'd make  
6      recommendations for, you know, for what I thought,  
7      you know, pricing would -- what pricing was  
8      required to acquire the business from those  
9      particular customers, yes.

10           Q.      And so, in that contracting process, now  
11      you're on the other side, essentially, from where  
12      you were at CVS.

13           A.      Right.

14           Q.      So, you would get whatever information you  
15      could get with respect to an offer that Roxane may  
16      be making to a particular customer, and take that  
17      input from the customer and send it back up the  
18      line through Bob Sykora, is that correct?

19           A.      Yes, either Bob Sykora or the -- I guess  
20      we had what we called the contracting group.

21           Q.      And who headed up the contracting group at  
22      that time?